

Farm Service Agency, USDA

§ 760.1306

§ 760.1304 Eligibility.

(a) Payment under DELAP will only be made to producers, but the dairy “operation” must first qualify its production within limits provided for in this subpart in order to have the individuals or entities that qualify as “producers” receive payment subject to whatever additional limits (such as the adjusted gross income provisions of these regulations) apply. As needed the agency may construe the terms of this regulation in any manner needed to facilitate and expedite payments using existing data and records from other assistance programs. Further, those parties (State and local governments and their political subdivisions and related agencies) excluded from the MILC program will not be eligible for DELAP payments notwithstanding any other provision of these regulation. That said, to be eligible to receive payments under this subpart, a dairy producer in the United States must:

(1) Have produced milk in the United States and commercially marketed the milk produced any time during February 2009 through July 2009;

(2) Be a producer, as defined in § 760.1302;

(3) Provide FSA with proof of milk production commercially marketed by all dairy producers in the dairy operation during February 2009 through July 2009; and

(4) Submit an accurate and complete request for benefits as specified in § 760.1303, if production data is not available in the FSA county office.

(b) To be eligible to receive a payment, each producer in an eligible dairy operation must meet the average adjusted gross income eligibility requirements of 7 CFR part 1400. No person or entity will be eligible to receive any payment or direct or indirect benefit under this subpart if their annual average adjusted nonfarm income is over \$500,000 as determined under 7 CFR part 1400. In the case of indirect benefits, direct benefits to other parties will be reduced accordingly. This will mean that all of the attribution rules of part 1400 will apply. For example if Individual A is over the limit and owns 100 percent of Corporation C which had a 20 percent interest in Corporation B which had a 50 percent in-

terest in milk producer Corporation A, the AGI of Individual A would result in a 10 percent (100 percent times 20 percent times 50 percent) loss in benefits to Corporation A. For DELAP, the relevant period for the annual average adjusted nonfarm income is 2005 through 2007.

(1) Individual dairy producers in a dairy operation that is an entity are only eligible for a payment based on their share of the dairy operation.

(2) No payment will be made to any other producer based on the share of any dairy producer who exceeds the income limit or who, because of the attribution rules, has their payment reduced.

§ 760.1305 Proof of production.

(a) Dairy producers requesting benefits must, as required by this subpart, provide adequate proof of the dairy operation’s eligible production during the months of February through July 2009, if those records are not already available at the FSA county office. The dairy operation must also provide proof that the eligible production was also commercially marketed during the same period.

(b) To be eligible for payment, dairy producers marketing milk during February through July 2009 must provide any required supporting documents to assist FSA in verifying production. Supporting documentation may be provided by either the dairy producer or by the dairy operation for each of its producers. Examples of supporting documentation may include, but are not limited to: Milk marketing payment stubs, tank records, milk handler records, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. Dairy operations and producers may also be required to allow FSA to examine the herd of cattle as production evidence. If supporting documentation requested is not presented to FSA, the request for benefits will be denied.

§ 760.1306 Availability of funds.

(a) Payments under this subpart are subject to the availability of funds.

§ 760.1307

The total available program funds are \$290,000,000.

(b) FSA will prorate the available funds by a national factor to ensure payments do not exceed \$290,000,000. The payment will be made based on the national payment rate as determined by FSA. FSA will prorate the payments based on the amount of milk production eligible for payments in a fair and reasonable manner.

(c) A reserve will be created to handle new applications, appeals, and errors.

§ 760.1307 Dairy operation payment quantity.

(a) A dairy operation's payment quantity (the quantity of milk on which the "operation" can generate payments for "producers" involved in the operation) will be determined by FSA, based on the pounds of production of commercially marketed milk during the months of February 2009 through July 2009, multiplied by two.

(b) The maximum payment quantity for which a dairy operation can generate payments for its dairy producers under this subpart will be 6,000,000 pounds.

(c) The dairy operation's payment quantity will be used to determine the amount of DELAP payments made to dairy producers.

§ 760.1308 Payment rate.

(a) A national per-hundredweight payment rate will be calculated by dividing the available funding, less a reserve established by FSA, by the total pounds of eligible production approved for payment.

(b) Each eligible dairy producer's payment with respect to an operation will be calculated by multiplying the payment rate determined in paragraph (a) of this section by the dairy producer's share in the dairy operation's eligible production payment quantity as determined in accordance with section § 760.1307.

(c) In the event that approval of all eligible requests for benefits would result in expenditures in excess of the amount available, FSA will reduce the payment rate in a manner that FSA determines to be fair and reasonable.

7 CFR Ch. VII (1–1–14 Edition)

§ 760.1309 Appeals.

The appeal regulations set forth at 7 CFR parts 11 and 780 apply to determinations made under this subpart.

§ 760.1310 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer or operation will be ineligible to receive benefits under this subpart if the producer or operation is determined by FSA to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this subpart;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any payment to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and receiving payment under this subpart will be jointly and severally liable with other producers or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 760.1311 Death, incompetence, or disappearance.

(a) In the case of the death, incompetency, or disappearance of a person or the dissolution of an entity that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

(b) Payments may be made to an otherwise eligible dairy producer who is now deceased or to a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate makes the request for benefits as specified in § 760.1303. Proof of authority over the deceased producer's estate or a dissolved entity must be provided.